

ALAN C. BRYAN ID No.: 4501

CROWLEY, HAUGHEY, HANSON,

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ATTORNEYS FOR FIRST INTERSTATE BANK

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF MONTANA

IN RE:) Bankruptcy No.: 06-60855-RBK-11

INCREDIBLE AUTO SALES LLC,) **MOTION TO MODIFY STAY**

Debtor.

The Motion of First Interstate Bank ("Bank"), secured creditor herein, respectfully represents:

1. The Debtor filed a Petition in this Court under Chapter 11 of the Bankruptcy Code on October 17, 2006.

2. Debtor is in possession of collateral which, upon information and belief, is owned by a third party and which is subject to Bank's first priority lien. Pursuant to Mont. LBR 4001-1, Bank provides the following information:

A. The present balance owing to Bank, excluding any pre-computed interest or other unearned charges, is \$5,668.09.

1 B. The date upon which the subject debt was incurred was May 1, 2002.

2 C. Bank holds a security interest upon the following described property which,
3 upon information and belief, is in possession of the Debtor:

4 2001 Buick Regal, VIN 2G4WB55KX11307432 (the "Vehicle").

5 D. On May 1, 2002, Colleen Sheehan and Dean Sheehan entered into a Retail
6 Installment Contract and Disclosure (the "Contract"), in writing, with Underriner Motors of
7 Billings, Montana, for the Sheehans' purchase of the Vehicle. A true and correct copy of the
8 Contract is attached hereto as Exhibit "A" and by this reference incorporated herein.

9 Thereafter, Underriner Motors' interest in the Contract was in due course assigned to Bank.

10 Pursuant to the Contract, Bank has a security interest in the Vehicle. Bank perfected that
11 security interest by filing a Notice of Lien Filing with the Montana Department of Motor
12 Vehicles. A true and correct copy of the Notice of Lien Filing is attached hereto as Exhibit
13 "B" and by this reference incorporated herein. Upon information and belief, on or about

14 October 10, 2006, the Sheehans entered into a Retail Installment Sale Contract with Debtor
15 wherein the Vehicle was traded to Debtor as part of the transaction. In the ordinary course of
16 business, the dealer pays off the outstanding balance of the debt against the trade-in vehicle,
17 and obtains title to the same. This did not happen in the present case. As a result, the full
18 balance of the Contract is due and owing, and the Sheehans are in breach of the Contract.

19 E. A description of Bank's collateral, including its location, is as follows:

20 2001 Buick Regal, VIN 2G4WB55KX11307432

21 located in Debtor's possession.

22 F. The fair market value of Bank's collateral is estimated to be at least
23 \$5,668.09.

24 G. There are no other security interests or liens which have priority over that of
25 Bank.

1 H. The Contract is in default for the October 15, 2006, installment in the amount
2 of \$333.94.

3 I. This Motion is made under and pursuant to 11 U.S.C., §362(d)(i) and
4 §362(d)(ii).

5 J. Other facts which are relevant in determining whether relief should be granted
6 are as follows: None.

7 3. Bank further represents that in the event the court grants its Motion, Bank will
8 seek foreclosure and liquidation of the above-described collateral in accordance with
9 applicable non-bankruptcy law, and will dispose of the collateral in a commercially
10 reasonable manner.

11 4. Upon disposition, Bank shall account for all proceeds to the court and agrees
12 to turn over any proceeds in excess of Bank's allowed secured claim to the Trustee.

13 **WHEREFORE**, First Interstate Bank respectfully requests the court to grant this
14 Motion to Modify the stay imposed by Section, First Interstate Bank respectfully requests the
15 court to grant this Motion to Modify the stay imposed by §362(a) of the Bankruptcy Code.

16 Dated this 2nd day of November, 2006.

17 CROWLEY, HAUGHEY, HANSON,
18 TOOLE & DIETRICH P.L.L.P.

19
20 By /s/ Alan C. Bryan
21 ALAN C. BRYAN
22 P. O. Box 2529
23 Billings, MT 59103-2529
24 Attorneys for First Interstate Bank
25

NOTICE TO DEBTOR

If you object to the motion, you must file a written responsive pleading and request a hearing within ten (10) days of the date of the motion. the objecting party shall schedule the hearing and shall include in the caption of the responsive pleading the date, time and location of the hearing by inserting in the caption the following:

NOTICE OF HEARING

Date: _____
Time: _____
Location: _____

This contested matter shall be scheduled for hearing for the next hearing date scheduled in the division within which the case is filed. The date, time and location of the hearing can be obtained from the Clerk of Court or from the Court's website at www.mtb.uscourt.gov. In the event such scheduled hearing date is thirty (30) days beyond the filing date of the motion for relief, then a preliminary hearing within such thirty (30) day period shall be scheduled by the responding party after such party contacts the Clerk of Court to confirm the preliminary telephone hearing date and time, which shall be set forth in the response.

If you fail to file a written response to the above Motion to Modify Stay with the particularity required by Mont. LBR 4001-1(b), and request a hearing, within ten (10) days of the date of this Notice, with service on the undersigned and all parties entitled to service under all applicable rules, then your failure to respond or to request a hearing will be deemed an admission that the motion for relief should be granted without further notice or hearing.

Dated this 2nd day of November, 2006.

CROWLEY, HAUGHEY, HANSON,
TOOLE & DIETRICH P.L.L.P.

By /s/ Alan C. Bryan
ALAN C. BRYAN
P. O. Box 2529
Billings, MT 59103-2529
Attorneys for First Interstate Bank

CERTIFICATE OF SERVICE

Under penalty of perjury, I hereby certify that on the 2nd day of November, 2006, I served a true and exact copy of the foregoing by depositing the same in the U. S. Mail, first-class postage prepaid, addressed to the following:

Clarke B. Rice
2951 King Ave West
Billings, MT 59102
By ECF Notice

William L. Needler
555 Stokie Blvd Ste 500
Northbrook, IL 60062
By ECF Notice

Neal G. Jensen
Assistant U.S. Trustee
Liberty Center, Ste 204
Great Falls, MT 59401
By ECF Notice

Incredible Auto Sales LLC
1832 King Ave West
Billings, MT 59102

Colleen Sheehan
655 Orchard Ln
Billings, MT 59101-5029

Dean C. Sheehan
655 Orchard Ln
Billings, MT 59101-5029

/s/ Alan C. Bryan